

19-5-101. Short title.

This chapter is known as the "Water Quality Act."

Renumbered and Amended by Chapter 112, 1991 General Session

19-5-102. Definitions.

As used in this chapter:

- (1) "Agriculture discharge":
 - (a) means the release of agriculture water from the property of a farm, ranch, or feed lot that:
 - (i) pollutes a surface body of water, including a stream, lake, pond, marshland, watercourse, waterway, river, ditch, and other water conveyance system of the state;
 - (ii) pollutes the ground water of the state; or
 - (iii) constitutes a significant nuisance on urban land; and
 - (b) does not include:
 - (i) runoff from a farm, ranch, or feed lot or return flows from irrigated fields onto land that is not part of a body of water; or
 - (ii) a release into a normally dry water conveyance to an active body of water, unless the release reaches the water of a lake, pond, stream, marshland, river, or other active body of water.
- (2) "Agriculture water" means:
 - (a) water used by a farmer, rancher, or feed lot for the production of food, fiber, or fuel;
 - (b) return flows from irrigated agriculture; and
 - (c) agricultural storm water runoff.
- (3) "Board" means the Water Quality Board created in Section 19-1-106.
- (4) "Commission" means the Conservation Commission, created in Section 4-18-104.
- (5) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.
- (6) "Director" means the director of the Division of Water Quality or, for purposes of groundwater quality at a facility licensed by and under the jurisdiction of the Division of Radiation Control, the director of the Division of Radiation Control.
- (7) "Discharge" means the addition of any pollutant to any waters of the state.
- (8) "Discharge permit" means a permit issued to a person who:
 - (a) discharges or whose activities would probably result in a discharge of pollutants into the waters of the state; or
 - (b) generates or manages sewage sludge.
- (9) "Disposal system" means a system for disposing of wastes and includes sewerage systems and treatment works.
- (10) "Division" means the Division of Water Quality, created in Subsection 19-1-105(1)(f).
- (11) "Effluent limitations" means any restrictions, requirements, or prohibitions, including schedules of compliance established under this chapter, which apply to discharges.
- (12) "Point source":

(a) means any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged; and

(b) does not include return flows from irrigated agriculture.

(13) "Pollution" means any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of any waters of the state, unless the alteration is necessary for the public health and safety.

(14) "Publicly owned treatment works" means any facility for the treatment of pollutants owned by the state, its political subdivisions, or other public entity.

(15) "Schedule of compliance" means a schedule of remedial measures, including an enforceable sequence of actions or operations leading to compliance with this chapter.

(16) "Sewage sludge" means any solid, semisolid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage.

(17) "Sewerage system" means pipelines or conduits, pumping stations, and all other constructions, devices, appurtenances, and facilities used for collecting or conducting wastes to a point of ultimate disposal.

(18) "Total maximum daily load" means a calculation of the maximum amount of a pollutant that a body of water can receive and still meet water quality standards.

(19) "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing, or holding wastes.

(20) "Underground injection" means the subsurface emplacement of fluids by well injection.

(21) "Underground wastewater disposal system" means a system for disposing of domestic wastewater discharges as defined by the board and the executive director.

(22) "Waste" or "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.

(23) "Waters of the state":

(a) means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state; and

(b) does not include bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, a public health hazard, or a menace to fish or wildlife.

Amended by Chapter 227, 2013 General Session

19-5-103. Water Quality Board -- Members of board -- Appointment -- Terms -- Organization -- Meetings -- Per diem and expenses.

(1) The board consists of the following nine members:

(a) the following non-voting member, except that the member may vote to break

a tie vote between the voting members:

- (i) the executive director; or
- (ii) an employee of the department designated by the executive director; and
- (b) the following eight voting members, who shall be appointed by the governor

with the consent of the Senate:

- (i) one representative who:
 - (A) is not connected with industry;
 - (B) is an expert in water quality matters; and
 - (C) is a Utah-licensed physician, a Utah-licensed professional engineer, or a scientist with relevant training and experience;
- (ii) two government representatives who do not represent the federal government;
- (iii) one representative from the mineral industry;
- (iv) one representative from the manufacturing industry;
- (v) one representative who represents agricultural and livestock interests;
- (vi) one representative from the public who represents:
 - (A) an environmental nongovernmental organization; or
 - (B) a nongovernmental organization that represents community interests and does not represent industry interests; and
- (vii) one representative from the public who is trained and experienced in public health.

(2) A member of the board shall:

- (a) be knowledgeable about water quality matters, as evidenced by a professional degree, a professional accreditation, or documented experience;
- (b) be a resident of Utah;
- (c) attend board meetings in accordance with the attendance rules made by the department under Subsection 19-1-201(1)(d)(i)(A); and
- (d) comply with all applicable statutes, rules, and policies, including the conflict of interest rules made by the department under Subsection 19-1-201(1)(d)(i)(B).

(3) No more than five of the appointed members may be from the same political party.

(4) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term with the consent of the Senate.

(5) (a) A member shall be appointed for a term of four years and is eligible for reappointment.

(b) Notwithstanding the requirements of Subsection (5)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that half of the appointed board is appointed every two years.

(c) (i) Notwithstanding Subsection (5)(a), the term of a board member who is appointed before March 1, 2013, shall expire on February 28, 2013.

(ii) On March 1, 2013, the governor shall appoint or reappoint board members in accordance with this section.

(6) A member shall hold office until the expiration of the member's term and until the member's successor is appointed, not to exceed 90 days after the formal expiration of the term.

- (7) The board shall:
 - (a) organize and annually select one of its members as chair and one of its members as vice chair;
 - (b) hold at least four regular meetings each calendar year; and
 - (c) keep minutes of its proceedings which are open to the public for inspection.
- (8) The chair may call a special meeting upon the request of three or more members of the board.
- (9) Each member of the board and the director shall be notified of the time and place of each meeting.
- (10) Five members of the board constitute a quorum for the transaction of business, and the action of a majority of members present is the action of the board.
- (11) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 360, 2012 General Session

19-5-104. Powers and duties of board.

- (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board may make rules that:
 - (a) taking into account Subsection (6):
 - (i) implement the awarding of construction loans to political subdivisions and municipal authorities under Section 11-8-2, including:
 - (A) requirements pertaining to applications for loans;
 - (B) requirements for determination of eligible projects;
 - (C) requirements for determination of the costs upon which loans are based, which costs may include engineering, financial, legal, and administrative expenses necessary for the construction, reconstruction, and improvement of sewage treatment plants, including major interceptors, collection systems, and other facilities appurtenant to the plant;
 - (D) a priority schedule for awarding loans, in which the board may consider, in addition to water pollution control needs, any financial needs relevant, including per capita cost, in making a determination of priority; and
 - (E) requirements for determination of the amount of the loan;
 - (ii) implement the awarding of loans for nonpoint source projects pursuant to Section 73-10c-4.5;
 - (iii) set effluent limitations and standards subject to Section 19-5-116;
 - (iv) implement or effectuate the powers and duties of the board; and
 - (v) protect the public health for the design, construction, operation, and maintenance of underground wastewater disposal systems, liquid scavenger operations, and vault and earthen pit privies;
 - (b) govern inspection, monitoring, recordkeeping, and reporting requirements for underground injections and require permits for underground injections, to protect

drinking water sources, except for wells, pits, and ponds covered by Section 40-6-5 regarding gas and oil, recognizing that underground injection endangers drinking water sources if:

- (i) injection may result in the presence of any contaminant in underground water that supplies or can reasonably be expected to supply any public water system, as defined in Section 19-4-102; and

- (ii) the presence of the contaminant may:

- (A) result in the public water system not complying with any national primary drinking water standards; or

- (B) otherwise adversely affect the health of persons;

- (c) govern sewage sludge management, including permitting, inspecting, monitoring, recordkeeping, and reporting requirements; and

- (d) notwithstanding the provisions of Section 19-4-112, govern design and construction of irrigation systems that:

- (i) convey sewage treatment facility effluent of human origin in pipelines under pressure, unless contained in surface pipes wholly on private property and for agricultural purposes; and

- (ii) are constructed after May 4, 1998.

- (2) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall adopt and enforce rules and establish fees to cover the costs of testing for certification of operators of treatment works and sewerage systems operated by political subdivisions.

- (b) In establishing certification rules under Subsection (2)(a), the board shall:

- (i) base the requirements for certification on the size, treatment process type, and complexity of the treatment works and sewerage systems operated by political subdivisions;

- (ii) allow operators until three years after the date of adoption of the rules to obtain initial certification;

- (iii) allow a new operator one year from the date the operator is hired by a treatment plant or sewerage system or three years after the date of adoption of the rules, whichever occurs later, to obtain certification;

- (iv) issue certification upon application and without testing, at a grade level comparable to the grade of current certification to operators who are currently certified under the voluntary certification plan for wastewater works operators as recognized by the board; and

- (v) issue a certification upon application and without testing that is valid only at the treatment works or sewerage system where that operator is currently employed if the operator:

- (A) is in charge of and responsible for the treatment works or sewerage system on March 16, 1991;

- (B) has been employed at least 10 years in the operation of that treatment works or sewerage system before March 16, 1991; and

- (C) demonstrates to the board the operator's capability to operate the treatment works or sewerage system at which the operator is currently employed by providing employment history and references as required by the board.

- (3) The board shall:

- (a) develop programs for the prevention, control, and abatement of new or existing pollution of the waters of the state;
- (b) adopt, modify, or repeal standards of quality of the waters of the state and classify those waters according to their reasonable uses in the interest of the public under conditions the board may prescribe for the prevention, control, and abatement of pollution;
- (c) give reasonable consideration in the exercise of its powers and duties to the economic impact of water pollution control on industry and agriculture;
- (d) meet the requirements of federal law related to water pollution;
- (e) establish and conduct a continuing planning process for control of water pollution, including the specification and implementation of maximum daily loads of pollutants;
- (f) (i) approve, approve in part, approve with conditions, or deny, in writing, an application for water reuse under Title 73, Chapter 3c, Wastewater Reuse Act;
(ii) issue an operating permit for water reuse under Title 73, Chapter 3c, Wastewater Reuse Act;
- (g) (i) review all total daily maximum load reports and recommendations for water quality end points and implementation strategies developed by the division before submission of the report, recommendation, or implementation strategy to the EPA;
(ii) disapprove, approve, or approve with conditions all staff total daily maximum load recommendations; and
(iii) provide suggestions for further consideration to the Division of Water Quality in the event a total daily maximum load strategy is rejected; and
- (h) to ensure compliance with applicable statutes and regulations:
 - (i) review a settlement negotiated by the director in accordance with Subsection 19-5-106(2)(k) that requires a civil penalty of \$25,000 or more; and
 - (ii) approve or disapprove the settlement.
- (4) The board may:
 - (a) order the director to issue, modify, or revoke orders:
 - (i) prohibiting or abating discharges;
 - (ii) requiring the construction of new treatment works or any parts of them, or requiring the modification, extension, or alteration of existing treatment works as specified by board rule or any parts of them, or the adoption of other remedial measures to prevent, control, or abate pollution;
 - (iii) setting standards of water quality, classifying waters or evidencing any other determination by the board under this chapter; or
 - (iv) requiring compliance with this chapter and with rules made under this chapter;
- (b) advise, consult, and cooperate with other agencies of the state, the federal government, other states, or interstate agencies, or with affected groups, political subdivisions, or industries to further the purposes of this chapter; or
- (c) delegate the authority to issue an operating permit to a local health department.
- (5) In performing the duties listed in Subsections (1) through (4), the board shall give priority to pollution that results in a hazard to the public health.
- (6) The board shall take into consideration the availability of federal grants:

- (a) in determining eligible project costs; and
- (b) in establishing priorities pursuant to Subsection (1)(a)(i).

(7) The board may not issue, amend, renew, modify, revoke, or terminate any of the following that are subject to the authority granted to the director under Section 19-5-106:

- (a) a permit;
- (b) a license;
- (c) a registration;
- (d) a certification; or
- (e) another administrative authorization made by the director.

(8) A board member may not speak or act for the board unless the board member is authorized by a majority of a quorum of the board in a vote taken at a meeting of the board.

Amended by Chapter 360, 2012 General Session

19-5-104.5. Legislative approval.

(1) Before sending a board-approved report, strategy, or recommendation that will recommend a total maximum daily load end point and implementation strategy to the EPA for review and approval, the Water Quality Board shall submit the report, strategy, or recommendation:

- (a) for review to the Natural Resources, Agriculture, and Environment Interim Committee if the report, strategy, or recommendation will require a public or private expenditure in excess of \$10,000,000 but less than \$100,000,000 for compliance; or

- (b) for approval to the Legislature if the strategy will require a public or private expenditure of \$100,000,000 or more.

(2) In reviewing a report, strategy, or recommendation, the Natural Resources, Agriculture, and Environment Interim Committee may:

- (a) suggest additional areas of consideration; or
- (b) recommend the report, strategy, or recommendation be re-evaluated by the Water Quality Board.

Enacted by Chapter 304, 2011 General Session

19-5-105. Rulemaking authority and procedure.

(1) Except as provided in Subsections (2) and (3), no rule that the board makes for the purpose of the state administering a program under the federal Clean Water Act or the federal Safe Drinking Water Act may be more stringent than the corresponding federal regulations which address the same circumstances. In making rules, the board may incorporate by reference corresponding federal regulations.

(2) The board may make rules more stringent than corresponding federal regulations for the purpose described in Subsection (1), only if it makes a written finding after public comment and hearing and based on evidence in the record that the corresponding federal regulations are not adequate to protect public health and the environment of the state. Those findings shall be accompanied by an opinion referring to and evaluating the public health and environmental information and studies

contained in the record which form the basis for the board's conclusion.

(3) The board may make rules related to agriculture water more stringent than the corresponding federal regulations if the commission approves.

Amended by Chapter 155, 2011 General Session

19-5-105.5. Agriculture water.

(1) (a) The board shall draft any rules relating to agriculture water in cooperation with the commission.

(b) The commission shall advise the board before the board may adopt rules relating to agriculture water.

(2) A program or rule adopted by the board for agriculture production or irrigation water shall:

(a) be consistent with the federal Clean Water Act; and

(b) if possible, be developed in a voluntary cooperative program with the agriculture producer associations and the commission.

(3) (a) The board's authority to regulate a discharge is subject to Subsection (3)(b) relating to an agriculture discharge.

(b) (i) A person responsible for an agriculture discharge shall mitigate the resulting damage in a reasonable manner, as approved by the director after consulting with the commission chair.

(ii) A penalty imposed on an agriculture discharge shall be proportionate to the seriousness of the resulting harm, as determined by the director in consultation with the commission chair.

(iii) An agriculture producer may not be held liable for an agriculture discharge resulting from a large weather event if the agriculture producer has taken reasonable measures, as the board defines by rule, to prevent an agriculture discharge.

Amended by Chapter 360, 2012 General Session

19-5-105.6. Agriculture Certificate of Environmental Stewardship.

(1) As used in this section:

(a) "Agriculture operation" means a farm, ranch, or animal feeding operation.

(b) "Approved agriculture environmental stewardship program" means a program:

(i) created under Section 4-18-107;

(ii) that is approved by the board; and

(iii) that includes practices and other requirements sufficient to prevent violations of the Utah Pollutant Discharge Elimination System program, statute, or rules.

(c) "Certified agriculture operation" means an agriculture operation that has current certification under an approved agriculture certificate of environmental stewardship program and that is in compliance with the requirements of that certification.

(2) (a) The division may not require a certified agriculture operation to implement additional or different practices to control nonpoint source discharges for the purpose of meeting total maximum daily load requirements.

(b) If the division implements additional or different best management practices to control nonpoint source discharges, those best management practices shall be effective on a certified agriculture operation upon the expiration of the operation's certificate, as described in Subsection 4-18-107(4).

(3) Notwithstanding Subsection (2), a certified agriculture operation may be required to undertake projects or additional best management practices for the purpose of meeting the total maximum daily load requirements under the following conditions:

(a) the certified agriculture operation has nonpoint source discharges to surface waters in an impaired watershed that is covered by an approved total maximum daily load;

(b) the board, in consultation with the Conservation Commission, has determined that the best management practice or project is necessary to restore water quality in the affected watershed; and

(c) the project or best management practice is funded:

(i) at least 75% by the state, federal government sources, or private sources other than the certified agriculture operation; or

(ii) at least 90% by the state, federal government sources, or private sources other than the certified agriculture operation if the director, commissioner of the Department of Agriculture and Food, and director of the Utah State University Extension service, or their designees, determine by majority vote that the requirements of Subsection (3)(b) pose a serious financial hardship to the certified agriculture operation.

(4) The division shall consider an agriculture operation's compliance with certification under an approved agriculture environmental stewardship program as a mitigating factor for any penalty purposes.

Enacted by Chapter 383, 2014 General Session

19-5-106. Director -- Appointment -- Duties.

(1) The executive director shall appoint the director. The director shall serve under the administrative direction of the executive director.

(2) The director shall:

(a) develop programs for the prevention, control, and abatement of new or existing pollution of the waters of the state;

(b) advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of this chapter;

(c) develop programs for the management of sewage sludge;

(d) subject to the provisions of this chapter, enforce rules made by the board through the issuance of orders, which orders may include:

(i) prohibiting or abating discharges of wastes into the waters of the state;

(ii) requiring the construction of new control facilities or any parts of them or the modification, extension, or alteration of existing control facilities or any parts of them, or the adoption of other remedial measures to prevent, control, or abate water pollution; or

(iii) prohibiting any other violation of this chapter or rules made under this chapter;

(e) review plans, specifications, or other data relative to pollution control

systems or any part of the systems provided for in this chapter;

(f) issue construction or operating permits for the installation or modification of treatment works or any parts of the treatment works;

(g) after public notice and opportunity for public hearing, issue, continue in effect, renew, revoke, modify, or deny discharge permits under reasonable conditions the board may prescribe to:

(i) control the management of sewage sludge; or

(ii) prevent or control the discharge of pollutants, including effluent limitations for the discharge of wastes into the waters of the state;

(h) meet the requirements of federal law related to water pollution;

(i) under the direction of the executive director, represent the state in all matters pertaining to water pollution, including interstate compacts and other similar agreements;

(j) collect and disseminate information relating to water pollution and the prevention, control, and abatement of water pollution; and

(k) subject to Subsection 19-5-104(3)(h), settle or compromise any civil action initiated by the division to compel compliance with this chapter or the rules made under this chapter.

(3) The director may:

(a) employ full-time employees as necessary to carry out the provisions of this chapter;

(b) subject to the provisions of this chapter, authorize any employee or representative of the department to enter, at reasonable times and upon reasonable notice, in or upon public or private property for the purposes of inspecting and investigating conditions and plant records concerning possible water pollution;

(c) encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to water pollution and causes of water pollution as necessary for the discharge of duties assigned under this chapter, including the establishment of inventories of pollution sources;

(d) collect and disseminate information relating to water pollution and the prevention, control, and abatement of water pollution;

(e) subject to the provisions of this chapter, exercise all incidental powers necessary to carry out the purposes of this chapter, including certification to any state or federal authorities for tax purposes only if the construction, installation, or acquisition of any facility, land, building, machinery, equipment, or any part of them conforms with this chapter;

(f) cooperate with any person in studies and research regarding water pollution and its control, abatement, and prevention;

(g) encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to water pollution and causes of water pollution; or

(h) as authorized by the board and subject to the provisions of this chapter, act as executive secretary of the board under the direction of the chairman of the board.

Amended by Chapter 360, 2012 General Session

19-5-107. Discharge of pollutants unlawful -- Discharge permit required.

(1) (a) Except as provided in this chapter or rules made under it, it is unlawful for any person to discharge a pollutant into waters of the state or to cause pollution which constitutes a menace to public health and welfare, or is harmful to wildlife, fish or aquatic life, or impairs domestic, agricultural, industrial, recreational, or other beneficial uses of water, or to place or cause to be placed any wastes in a location where there is probable cause to believe it will cause pollution.

(b) For purposes of injunctive relief, any violation of this subsection is a public nuisance.

(2) (a) A person may not generate, store, treat, process, use, transport, dispose, or otherwise manage sewage sludge, except in compliance with this chapter and rules made under it.

(b) For purposes of injunctive relief, any violation of this subsection is a public nuisance.

(3) It is unlawful for any person, without first securing a permit from the director, to:

(a) make any discharge or manage sewage sludge not authorized under an existing valid discharge permit; or

(b) construct, install, modify, or operate any treatment works or part of any treatment works or any extension or addition to any treatment works, or construct, install, or operate any establishment or extension or modification of or addition to any treatment works, the operation of which would probably result in a discharge.

Amended by Chapter 360, 2012 General Session

19-5-108. Discharge permits -- Requirements and procedure for issuance.

(1) The board may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for and require the submission of plans, specifications, and other information to the director in connection with the issuance of discharge permits.

(2) Each discharge permit shall have a fixed term not exceeding five years. Upon expiration of a discharge permit, a new permit may be issued by the director as authorized by the board after notice and an opportunity for public hearing and upon condition that the applicant meets or will meet all applicable requirements of this chapter, including the conditions of any permit granted by the board.

(3) The board may require notice to the director of the introduction of pollutants into publicly-owned treatment works and identification to the director of the character and volume of any pollutant of any significant source subject to pretreatment standards under Subsection 307(b) of the federal Clean Water Act. The director shall provide in the permit for compliance with pretreatment standards.

(4) The director may impose as conditions in permits for the discharge of pollutants from publicly-owned treatment works appropriate measures to establish and insure compliance by industrial users with any system of user charges required under this chapter or the rules adopted under it.

(5) The director may apply and enforce against industrial users of publicly-owned treatment works, toxic effluent standards and pretreatment standards for the introduction into the treatment works of pollutants which interfere with, pass

through, or otherwise are incompatible with the treatment works.

Amended by Chapter 360, 2012 General Session

19-5-109. Grounds for revocation, modification, or suspension of discharge permit.

(1) Any permit issued under this chapter may be revoked, modified, or suspended in whole or in part for cause including:

- (a) violation of any condition of the permit;
- (b) obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; or
- (c) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

(2) For purposes of Subsection (1)(c), "condition" does not include statutory or regulatory effluent limitations enacted or adopted during the permit term, other than for toxic pollutants.

Amended by Chapter 114, 1995 General Session

19-5-110. Designation by governor of areas with quality control problems -- Classification of waters -- Adoption of standards of quality.

(1) The governor may identify and designate by boundary, or make a determination not to designate, areas within the state which, as a result of urban-industrial concentration or other factors, have substantial water quality control problems, and designate planning agencies and waste treatment management agencies for these areas.

(2) The board may group the waters of the state into classes according to their present most reasonable uses, and after public hearing, upgrade and reclassify from time to time the waters of the state to the extent that it is practical and in the public interest.

(3) (a) The board may establish standards of quality for each classification consistent with most reasonable present and future uses of the waters, and the standards may be modified or changed from time to time.

(b) Prior to classifying waters, setting quality standards or modifying or repealing them the board shall conduct public hearings for the consideration, adoption, or amendment of the classifications of waters and standards of purity and quality.

(c) The notice shall specify the waters concerning which a classification is sought to be made for which standards are sought to be adopted and the time, date, and place of the hearing.

(d) The notice shall be:

(i) published:

- (A) at least twice in a newspaper of general circulation in the area affected; and
- (B) as required in Section 45-1-101; and

(ii) mailed at least 30 days before the public hearing to the chief executive of each political subdivision of the area affected and to other persons the board has reason to believe will be affected by the classification and the setting of standards.

(4) (a) The adoption of standards of quality for the waters of the state and classification of the waters or any modification or change in classification shall be effectuated by an order of the board which shall be published:

- (i) in a newspaper of general circulation in the area affected; and
- (ii) as required in Section 45-1-101.

(b) In classifying waters and setting standards of water quality, adopting rules, or making any modification or change in classification or standards, the board shall allow and announce a reasonable time, not exceeding statutory deadlines contained in the federal Clean Water Act, for persons discharging wastes into the waters of the state to comply with the classification or standards and may, after public hearing if requested by the permittee, set and revise schedules of compliance and include these schedules within the terms and conditions of permits for the discharge of pollutants.

(5) Any discharge in accord with classification or standards authorized by a permit is not pollution for the purpose of this chapter.

Amended by Chapter 388, 2009 General Session

19-5-111. Notice of violations -- Hearings.

(1) Whenever the director determines there are reasonable grounds to believe that there has been a violation of this chapter or any order of the director or the board, the director may give written notice to the alleged violator specifying the provisions that have been violated and the facts that constitute the violation.

(2) The notice shall require that the matters complained of be corrected.

(3) The notice may order the alleged violator to appear before an administrative law judge as provided by Section 19-1-301 at a time and place specified in the notice and answer the charges.

Amended by Chapter 360, 2012 General Session

19-5-112. Hearings conducted by an administrative law judge -- Decisions on denial or revocation of permit conducted by executive director.

(1) Except as provided by Subsection (2), an administrative law judge shall conduct hearings authorized by Section 19-5-111 in accordance with Section 19-1-301.

(2) (a) An administrative law judge shall conduct, on the executive director's behalf, a hearing regarding an appeal of a permit decision for which the state has assumed primacy under the Federal Water Pollution Control Act, 33 U.S.C. Sec. 1251 et seq.

(b) The decision of the executive director is final and binding on all parties unless stayed or overturned on appeal.

Amended by Chapter 360, 2012 General Session

19-5-113. Power of director to enter property for investigation -- Records and reports required of owners or operators.

(1) The director or the director's authorized representative has, after presentation of credentials, the authority to enter at reasonable times upon any private

or public property for the purpose of:

(a) sampling, inspecting, or investigating matters or conditions relating to pollution or the possible pollution of any waters of the state, effluents or effluent sources, monitoring equipment, or sewage sludge; and

(b) reviewing and copying records required to be maintained under this chapter.

(2) (a) The board may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that require a person managing sewage sludge, or the owner or operator of a disposal system, including a system discharging into publicly owned treatment works, to:

(i) establish and maintain reasonable records and make reports relating to the operation of the system or the management of the sewage sludge;

(ii) install, use, and maintain monitoring equipment or methods;

(iii) sample, and analyze effluents or sewage sludges; and

(iv) provide other information reasonably required.

(b) The records, reports, and information shall be available to the public except as provided in Subsection 19-1-306(2) or Subsections 63G-2-305(1) and (2), Government Records Access and Management Act, as appropriate, for other than effluent information.

Amended by Chapter 360, 2012 General Session

19-5-114. Spills or discharges of oil or other substance -- Notice to director.

Any person who spills or discharges any oil or other substance which may cause the pollution of the waters of the state shall immediately notify the director of the spill or discharge, any containment procedures undertaken, and a proposed procedure for cleanup and disposal, in accordance with rules of the board.

Amended by Chapter 360, 2012 General Session

19-5-115. Violations -- Penalties -- Civil actions by director -- Ordinances and rules of political subdivisions.

(1) The terms "knowingly," "willfully," and "criminal negligence" are as defined in Section 76-2-103.

(2) Any person who violates this chapter, or any permit, rule, or order adopted under it, upon a showing that the violation occurred, is subject in a civil proceeding to a civil penalty not to exceed \$10,000 per day of violation.

(3) (a) A person is guilty of a class A misdemeanor and is subject to imprisonment under Section 76-3-204 and a fine not exceeding \$25,000 per day who, with criminal negligence:

(i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any condition or limitation included in a permit issued under Subsection 19-5-107(3);

(ii) violates Section 19-5-113;

(iii) violates a pretreatment standard or toxic effluent standard for publicly owned treatment works; or

(iv) manages sewage sludge in violation of this chapter or rules adopted under

it.

(b) A person is guilty of a third degree felony and is subject to imprisonment under Section 76-3-203 and a fine not to exceed \$50,000 per day of violation who knowingly:

(i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any condition or limitation included in a permit issued under Subsection 19-5-107(3);

(ii) violates Section 19-5-113;

(iii) violates a pretreatment standard or toxic effluent standard for publicly owned treatment works; or

(iv) manages sewage sludge in violation of this chapter or rules adopted under it.

(4) A person is guilty of a third degree felony and subject to imprisonment under Section 76-3-203 and shall be punished by a fine not exceeding \$10,000 per day of violation if that person knowingly:

(a) makes a false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter, or by any permit, rule, or order issued under it; or

(b) falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter.

(5) (a) As used in this section:

(i) "Organization" means a legal entity, other than a government, established or organized for any purpose, and includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(ii) "Serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(b) A person is guilty of a second degree felony and, upon conviction, is subject to imprisonment under Section 76-3-203 and a fine of not more than \$250,000 if that person:

(i) knowingly violates this chapter, or any permit, rule, or order adopted under it; and

(ii) knows at that time that the person is placing another person in imminent danger of death or serious bodily injury.

(c) If a person is an organization, it shall, upon conviction of violating Subsection (5)(b), be subject to a fine of not more than \$1,000,000.

(d) (i) A defendant who is an individual is considered to have acted knowingly if:

(A) the defendant's conduct placed another person in imminent danger of death or serious bodily injury; and

(B) the defendant was aware of or believed that there was an imminent danger of death or serious bodily injury to another person.

(ii) Knowledge possessed by a person other than the defendant may not be attributed to the defendant.

(iii) Circumstantial evidence may be used to prove that the defendant possessed actual knowledge, including evidence that the defendant took affirmative steps to be

shielded from receiving relevant information.

(e) (i) It is an affirmative defense to prosecution under this Subsection (5) that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of:

(A) an occupation, a business, or a profession; or

(B) medical treatment or medical or scientific experimentation conducted by professionally approved methods and the other person was aware of the risks involved prior to giving consent.

(ii) The defendant has the burden of proof to establish any affirmative defense under this Subsection (5)(e) and shall prove that defense by a preponderance of the evidence.

(6) For purposes of Subsections 19-5-115(3) through (5), a single operational upset that leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(7) (a) The director may begin a civil action for appropriate relief, including a permanent or temporary injunction, for any violation or threatened violation for which it is authorized to issue a compliance order under Section 19-5-111.

(b) Actions shall be brought in the district court where the violation or threatened violation occurs.

(8) (a) The attorney general is the legal advisor for the board and the director and shall defend them in all actions or proceedings brought against them.

(b) The county attorney or district attorney as appropriate under Section 17-18a-202 or 17-18a-203 in the county in which a cause of action arises, shall bring any action, civil or criminal, requested by the director, to abate a condition that exists in violation of, or to prosecute for the violation of, or to enforce, the laws or the standards, orders, and rules of the board or the director issued under this chapter.

(c) The director may initiate any action under this section and be represented by the attorney general.

(9) If any person fails to comply with a cease and desist order that is not subject to a stay pending administrative or judicial review, the director may initiate an action for and be entitled to injunctive relief to prevent any further or continued violation of the order.

(10) Any political subdivision of the state may enact and enforce ordinances or rules for the implementation of this chapter that are not inconsistent with this chapter.

(11) (a) Except as provided in Subsection (11)(b), all penalties assessed and collected under the authority of this section shall be deposited in the General Fund.

(b) The department may reimburse itself and local governments from money collected from civil penalties for extraordinary expenses incurred in environmental enforcement activities.

(c) The department shall regulate reimbursements by making rules that:

(i) define qualifying environmental enforcement activities; and

(ii) define qualifying extraordinary expenses.

Amended by Chapter 237, 2013 General Session

19-5-116. Limitation on effluent limitation standards for BOD, SS,

Coliforms, and pH for domestic or municipal sewage.

Unless required to meet instream water quality standards or federal requirements established under the federal Water Pollution Control Act, the board may not establish, under Section 19-5-104, effluent limitation standards for Biochemical Oxygen Demand (BOD), Total Suspended Solids (SS), Coliforms, and pH for domestic or municipal sewage which are more stringent than the following:

(1) Biochemical Oxygen Demand (BOD): The arithmetic mean of BOD values determined on effluent samples collected during any 30-day period may not exceed 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l during any seven-day period.

(2) Total Suspended Solids (SS): The arithmetic mean of SS values determined on effluent samples collected during any 30-day period may not exceed 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l during any seven-day period.

(3) Coliform: The geometric mean of total coliforms and fecal coliform bacteria in effluent samples collected during any 30-day period may not exceed either 2000/100 ml for total coliforms or 200/100 ml for fecal coliforms. The geometric mean during any seven-day period may not exceed 2500/100 ml for total coliforms or 250/100 for fecal coliforms.

(4) pH: The pH level shall be maintained at a level not less than 6.5 or greater than 9.0.

Amended by Chapter 297, 2011 General Session

19-5-117. Purpose and construction of chapter.

(1) It is the purpose of this chapter to provide:

(a) additional and cumulative remedies to prevent, abate, and control the pollution of the waters of the state; and

(b) sufficient authority to allow the state to meet federal requirements for the state's assumption of primacy under the federal Water Pollution Control Act, as amended by the Water Quality Act of 1987, 33 U.S.C. Section 1251 et seq.

(2) Nothing in this chapter:

(a) abridges or alters rights of action or remedies in equity or under common or statutory law, criminal or civil; or

(b) estops the state or any municipality or person, as riparian owners or otherwise, in the exercise of their rights in equity or under common or statutory law to suppress nuisances or to abate pollution.

Amended by Chapter 79, 1996 General Session

19-5-118. Chapter deemed auxiliary and supplementary to other laws.

This chapter does not repeal any laws relating to the pollution of waters or any conservation laws, but is auxiliary and supplementary to them except to the extent that the laws are in direct conflict with this chapter.

Renumbered and Amended by Chapter 112, 1991 General Session

19-5-119. State permits not required where federal government has

primary responsibility.

If for any reason, including cessation of federal funding, the federal government has the primary responsibility for the discharge permit or underground injection permit programs in this state, discharge or underground injection permits established by this chapter are not required.

Renumbered and Amended by Chapter 112, 1991 General Session

19-5-120. Sewage permit program fee.

(1) The department may assess a fee established under Section 63J-1-504 against persons required to obtain a permit under Section 19-5-108 for the management of sewage sludge, to be applied to the costs of administering the sewage permit program required by this chapter.

(2) In establishing the fee for each sludge disposal permit holder, the department shall take into account the proportionate size of the population served by the permit holder.

(3) All proceeds from the fee shall be applied to the administering of the sewage permit program required by this chapter.

Amended by Chapter 281, 2013 General Session

19-5-121. Underground wastewater disposal systems -- Certification required to design, inspect, maintain, or conduct percolation or soil tests -- Exemptions -- Rules -- Fees.

(1) As used in this section, "maintain" does not include the pumping of an underground wastewater disposal system.

(2) (a) Except as provided in Subsections (2)(b) and (2)(c), beginning January 1, 2002, a person may not design, inspect, maintain, or conduct percolation or soil tests for an underground wastewater disposal system, without first obtaining certification from the board.

(b) An individual is not required to obtain certification from the board to maintain an underground wastewater disposal system that serves a noncommercial, private residence owned by the individual or a member of the individual's family and in which the individual or a member of the individual's family resides or an employee of the individual resides without payment of rent.

(c) The board shall make rules allowing an uncertified individual to conduct percolation or soil tests for an underground wastewater disposal system that serves a noncommercial, private residence owned by the individual and in which the individual resides or intends to reside, or which is intended for use by an employee of the individual without payment of rent, if the individual:

- (i) has the capability of properly conducting the tests; and
- (ii) is supervised by a certified individual when conducting the tests.

(3) (a) The board shall adopt and enforce rules for the certification and recertification of individuals who design, inspect, maintain, or conduct percolation or soil tests for underground wastewater disposal systems.

(b) (i) The rules shall specify requirements for education and training and the

type and duration of experience necessary to obtain certification.

(ii) The rules shall recognize the following in meeting the requirements for certification:

(A) the experience of a contractor licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, who has five or more years of experience installing underground wastewater disposal systems;

(B) the experience of an environmental health scientist licensed under Title 58, Chapter 20a, Environmental Health Scientist Act; or

(C) the educational background of a professional engineer licensed under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

(iii) If eligibility for certification is based on experience, the applicant for certification shall show proof of experience.

(4) The department may establish fees in accordance with Section 63J-1-504 for the testing and certification of individuals who design, inspect, maintain, or conduct percolation or soil tests for underground wastewater disposal systems.

Amended by Chapter 297, 2011 General Session

19-5-122. Underground wastewater disposal systems -- Fee imposed on new systems.

(1) Beginning July 1, 2001, a one-time fee is imposed on each new underground wastewater disposal system installed.

(2) (a) From July 1, 2001 through June 30, 2002, the fee shall be \$25.

(b) Beginning July 1, 2002, the fee shall be established by the department in accordance with Section 63J-1-504.

(3) (a) The fee shall be paid when plans and specifications for the construction of a new underground wastewater disposal system are approved by the local health department or the Department of Environmental Quality.

(b) A local health department shall remit the fee revenue to the Division of Finance quarterly.

(4) The fee revenue shall be:

(a) deposited into the Underground Wastewater Disposal Restricted Account created in Section 19-5-123; and

(b) used to pay for costs of underground wastewater disposal system training programs.

Amended by Chapter 183, 2009 General Session

19-5-123. Underground Wastewater Disposal System Restricted Account created -- Contents -- Use of account money.

(1) The Underground Wastewater Disposal System Restricted Account is created within the General Fund.

(2) The contents of the account shall consist of:

(a) revenue from fees collected under Sections 19-5-121 and 19-5-122; and

(b) interest and earnings on account money.

(3) Money in the account shall be appropriated by the Legislature to the department for costs of training, testing, and certifying individuals who design, inspect, maintain, or conduct percolation or soils tests for underground wastewater disposal systems.

Enacted by Chapter 274, 2001 General Session

19-5-124. Phosphorus limit for household dishwashing detergent.

(1) As used in this section, "household dishwashing detergent" means a substance used:

- (a) to clean an item commonly used for preparing food, eating, or drinking; and
- (b) by an individual for a personal, family, or household purpose.

(2) Except as provided by Subsection (3), a person may not sell a household dishwashing detergent that contains 0.5% or more phosphorus by weight on or after July 1, 2010.

(3) This section does not apply to a dishwashing detergent designed and used for a commercial or industrial purpose.

Enacted by Chapter 81, 2008 General Session